UNITED
NATIONS

AT

Administrative Tribunal

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11 November 1994

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 683

Case No. 747: KHALIL

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 20 December 1992 and again on 22 April 1993, Rimon Farah Elias Khalil, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees (hereinafter referred to as UNRWA), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 3 August 1993, the Applicant, after making the necessary corrections, again filed an application requesting from the Tribunal that:

"1. I be reinstated in the employment of UNRWA in a suitable job and the payment of my salaries from the date of my separation to that of reemployment.

2. Failing my reemployment, ... that payment of a compensation be made to me which should be:

i. Equal to my salary and benefits from the date of my separation to the date of the decision of your honourable Tribunal and

ii. [To obtain] a letter from UNRWA which can clear me of all implied accusations of dishonesty ... by UNRWA."

Whereas the Respondent filed his answer on 11 January 1994;

Whereas the Applicant filed written observations on 11 May 1994;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 1 December 1981, as a Distributor with the Jerusalem Distribution Team, at the grade 1 level. On 3 November 1989, the Applicant was suspended without pay. His appointment was subsequently terminated, pursuant to area staff regulation 9.1, with effect from 11 November 1989.

On 5 May 1989, the Commissioner-General directed that an audit of supply and warehousing operations be undertaken in the West Bank. This operational audit was carried out from 16 May to 15 June 1989. It included two surprise visits to the Jerusalem Area stores. In a "strictly confidential" memorandum, dated 21 June 1989, to the Director of UNRWA Operations, West Bank, the Auditor reported signs indicating "that pilfering or malpractice may be taking place". He suggested the establishment of "a Board of Inquiry to closely investigate the distribution operations at the Jerusalem Area stores."

A Board of Inquiry was established, composed of the Field Supply and Transport Officer, the Deputy Field Relief and Social Services Officer, a Legal Officer, and an Administrative Assistant as Secretary. The Board commenced work on 23 August 1989. It adopted its report on 9 September 1989, having conducted interviews with the Distribution Team Leader, the Team Checker, the Distributors, including the Applicant, and many others involved in the Jerusalem Area distribution. The Board concluded that five staff members, including the Applicant, were guilty of "serious misconduct insofar as they have been directly involved in the intentional misappropriation of commodities" and three staff members were guilty of "misconduct insofar as they committed serious dereliction of duty."

According to the Applicant, on 15 October 1989, his team was told to discontinue its distribution functions. On 1 November, they were told to resume their distribution functions. On that day, the Applicant and his Distribution Team were involved in an incident in the village of Biddo. In a report dated 2 November 1989, the Sub-Area Officer, Jericho, stated that, in response to a call he received on 1 November 1989, from a Biddo resident, he had gone to Biddo. He found 200 people surrounding the UNRWA Distribution Team and its truck. They allowed the truck to leave, on condition that they could send a delegation to the UNRWA office to brief senior staff and "put an end to the Team's irregularities." Several witnesses to the incident subsequently testified, on 2 November and on 6 November, that commodities were being sold by the Distribution Team. On 9 November 1989, 12 residents of Biddo signed a statement that they "do not agree that the distribution team who committed the embezzlement process on 1 November 1989 return to our village once more under any circumstances ..."

On 2 November 1989, the Director of UNRWA Operations, West Bank, informed the Applicant:

> "... as the result of irregularities discovered by an audit and a board of inquiry into distribution of commodities with which you were involved, the Agency has decided, as a disciplinary measure, to suspend you without pay for a period of 30 days with effect from 3 November 1989 and upon completion of this suspension without pay to reassign you to the post of Sanitation Labourer, grade 01, in Jalazone Camp."

On 11 November 1989, the Director of UNRWA Operations wrote to the Applicant again, as follows:

> "... the investigation of your involvement into irregularities in the distribution of commodities has been completed and as a result it has been decided to terminate your appointment in the interests of the Agency under area staff regulation 9.1 with effect from close of business today ..."

On 31 December 1989, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 21 November 1990. Its findings read, in part, as follows:

"...

- The incidents of the Biddo village having occurred on 1 November 1989, the Board can only assume that the DUO/WB's [Director of UNRWA Operations, West Bank] letter was written in the full knowledge of these incidents and apparently in response to them.

- The Board notes also that in the above-mentioned letter, the DUO/WB had also decided to reassign the Appellant to a post of sanitation labourer in Jalazone camp, upon completion of his period of suspension.

- The Board finds it therefore difficult to accept the reasoning of the Administration in deciding on 11 November 1989 to terminate the services of the Appellant without submitting any evidence of new misconduct which could have justified the later decision.

- The Board believes that the chronological sequence of events and subsequent decisions is of the utmost importance and that, in all equity, no two separate decisions of varying severity could be taken in respect of one and the same case.

- The Board, therefore, recommends to the Commissioner-General to uphold the decision taken on 2 November 1989, assigning the Appellant to the post of Sanitation Labourer, grade 01, in Jalazone camp."

On 8 July 1992, the JAB transmitted its report to the Commissioner-General, noting:

...

2. Delay in submission of the report is due to belief of emergence of some evidence that could have led to a change in the recommendations of the Joint Appeals Board.

3. The Joint Appeals Board has reconsidered the case and accordingly confirms adherence to the recommendations made in the submitted report."

On 10 August 1992, the Officer-in-Charge, Headquarters, UNRWA, transmitted a copy of the JAB report to the Applicant and informed him as follows:

> "I regret to inform you that I cannot accept the Board's recommendation that you be transferred to the post of Sanitation Labourer in Jalazone Camp. I believe that the Board is mistaken in its assumption that the Administration was aware of the serious disturbances that had occurred at Biddo Village on 1 November 1989, when it wrote to you on 2 November 1989 about a transfer. I am satisfied that upon learning of that incident, the Administration decided to terminate your services in the interest of the Agency on 11 November 1989. I must therefore inform you that this decision will stand."

On 20 December 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was never charged verbally or in writing with misconduct and was not given an opportunity at any time to defend himself.

2. The Applicant's work was considered satisfactory. He did not violate any regulations or procedures pertaining to his work, or act in any immoral or dishonest manner.

3. Termination of the Applicant's services was unjust. He was a victim of collective punishment, which is against the principles of the United Nations.

Whereas the Respondent's principal contentions are:

1. The Commissioner-General has the discretionary authority under area staff regulation 9.1 to terminate the appointment of a staff member in the interest of the Agency.

2. The decision to terminate the Applicant's appointment was proper and not motivated by any improper motive. It was based on investigations which established that the Applicant was engaged in serious derelictions of duty, if not outright misconduct.

The Tribunal, having deliberated from 21 October to 11 November 1994, now pronounces the following judgement:

I. The Applicant's account begins with a description of his team being informed, on 15 October 1989, that it should discontinue its distribution functions. An interrogation of the team was carried out by four UNRWA employees as to how members carried out their functions in relation to distribution. Neither the Applicant nor any individual was accused of misuse of commodities.

On 1 November 1989, the team was ordered back to work. It went to the village of Biddo where, according to the Applicant, the team was attacked by two youths and certain goods were stolen. The security forces intervened and, after interrogation, the soldiers let the youths go with their booty.

According to the Applicant, on 2 November, the distribution team was given letters by UNRWA saying, in the Applicant's case, that he might be guilty of misconduct or serious misconduct. Specifically, it would appear that he had been involved in irregularities in the distribution of commodities. An investigation of these charges was being made. Pending its outcome, he was suspended from duty without pay, with effect from close of business 1 November 1989, in accordance with the provisions of staff rule 110.2. The Applicant says that he was never charged and never given an opportunity to defend himself.

On 11 November the Applicant was informed by letter that, as a result of the now completed investigation, it had been decided to terminate his appointment under area staff regulation 9.1, with effect from 11 November 1989. The Applicant says that he was not told what he was guilty of.

II. The Respondent gives a different account. He says that the Agency undertook an audit of the Supply, Distribution and

Warehousing Operations on the West Bank during the period 16 May to 15 June 1989. The auditor discovered irregularities in the Jerusalem stores, including excessive loading on trucks for daily distribution. He found more irregularities on a second visit.

As a result, a Board of Inquiry was established. Commencing on 23 August 1989, it held sessions until 9 September 1989, interviewing 18 witnesses, including the Applicant. The Board found that the Applicant, and others, had been involved in the misappropriation of commodities and in serious misconduct.

Having considered the Board's report, the Director of UNRWA Operations, West Bank, informed the Applicant on 2 November 1989, that, on the basis of the investigation, he was suspended for 30 days without pay. Thereafter, he was to be reassigned to the post of Sanitation Labourer. The Applicant, in his application, seems to be referring to a different letter, although of the same date.

The Respondent's account of the Biddo incident is that the team was accused publicly by the villagers of embezzlement or selling commodities intended for refugees and that an Agency official was able to calm down the situation only by promising to investigate these allegations. Subsequently, testimony was obtained that the Applicant was involved in the misappropriation of Agency goods.

Following the Biddo incident, the Director of UNRWA Affairs, West Bank, notified the Applicant, by letter of 11 November 1989, that his appointment was terminated.

III. The Applicant appealed to the Joint Appeals Board (JAB). While it could not determine whether the Agency had knowledge of the Biddo incident when it suspended the Applicant on 2 November 1989, the JAB recommended, on the assumption that the Administration was in possession of this information, that the decision to assign the Applicant to a new post be reinstated and the decision to terminate his appointment be rescinded.

Subsequently, the Deputy Commissioner-General stated that he was satisfied that the Field Director was not aware of the Biddo incident when he wrote to the Applicant on 2 November 1989 that he had been suspended and reassigned to a new post.

IV. The Tribunal accepts the account of the enquiry which was carried out in August and September 1989, although in his application the Applicant makes no reference to it. The Applicant had an opportunity to give his account of his work and would, presumably, have had an opportunity to answer any allegation made against him. However, it is unclear whether specific allegations were presented to him at that time.

The Tribunal also accepts that the Administration did not know of the Biddo incident when the letter of 2 November 1989 was written. The decision to suspend and reassign the Applicant in the aftermath of the enquiry was fully justified by its findings. Indeed it could be regarded as generous.

The Tribunal has no difficulty in accepting the Respondent's account of the Biddo incident, but it notes that the Applicant was not afforded an opportunity to respond to the allegations made concerning the incident.

V. While the Tribunal concludes that the Respondent's action in dismissing the Applicant was fully justified, it is troubled by the Applicant's contention that he was never charged with misconduct or given an opportunity to defend himself. The record supports this contention, indicating that the Applicant was notified of the findings of the two investigations against him, without having been formally charged. The Tribunal holds that the Applicant is therefore entitled to compensation.

VI. For the reasons set forth above, the Tribunal orders the Respondent to pay to the Applicant three months of his net base salary at the rate in effect on the date of his separation from service.

VII. All other pleas are rejected.

(Signatures)

Samar SEN
President

Hubert THIERRY
Member

Francis SPAIN
Member

New York, 11 November 1994

R. Maria VICIEN-MILBURN
Executive Secretary